

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

CHRISTIAN MEDINA  
AND NATALIA GUERRERO

v.

ASI LLOYDS AND PAUL BLAKE

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 5:16-cv-151

**JOINT NOTICE OF REMOVAL**

Defendants ASI Lloyds (“ASI”) and Paul Blake (“Blake”)(collectively referred to as Defendants), through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, file this Notice of Removal of the captioned action *Christian Medina and Natalia Guerrero v. ASI Lloyds and Paul Blake*; Cause No. 2016CVF001114D3 on the docket of the 341<sup>st</sup> Judicial District Court of Webb County, Texas. In support of this Notice of Removal, ASI respectfully represents the following:

1. Christian Median and Natalia Guerrero (“Plaintiffs”) commenced the captioned action against ASI Lloyds and Blake on May 2, 2016 by filing Plaintiff’s Original Petition (the “Petition”) in the 341<sup>st</sup> Judicial District Court of Webb County, Texas.

2. A copy of all process, pleadings, orders, and the docket sheet in the state court action are filed herewith. [See Index of Matters Being Filed, (a) Civil Case Information Sheet; (b) Plaintiffs’ Original Petition; (c) Correspondence dated 5/2/16 requesting issuance of citations for service on ASI and Paul Blake; (d) Civil Case – Calendar Call setting; (e) Citation issued to ASI Lloyds; (f) Citation issued to Paul Blake; (g) Officer’s return showing certified mail

forwarded to ASI Lloyds on May 23, 2016; (h) Certified Mail Receipt Return of ASI Lloyds showing service on 5/25/16; (i) officer's return showing certified mail issued to Paul Blake with no service return; and (j) Docket Sheet].

3. The Petition avers that Plaintiffs reside in Webb County, Texas (Petition, ¶ II). The Petition alleges that ASI is "in the business of insurance in the State of Texas" but fails to allege a state of incorporation or principal place of business. (Petition, ¶ II). Defendant, ASI Lloyds was, and at the date of this Notice remains, an unincorporated association of 10 underwriters. For diversity purposes, the citizenship of an unincorporated association is determined by the citizenship of each member of the entity.<sup>1</sup> The members of ASI Lloyds are the underwriters alone.<sup>2</sup> The individual underwriters are as follows: Tanya J. Fjare, Trevor C. Hillier, Kevin R. Milkey, John F. Auer, Jr., Edwin L. Cortez, Mary F. Fournet, Philip L. Brubaker, Pat McCrink, Jeff Hannon, and Angel Conlin. Each of these underwriters is a citizen of the State of Florida and resides outside the state of Texas as of the commencement of this lawsuit and its subsequent removal. Because each of the underwriters is a citizen of a state other than Texas, ASI Lloyds is not a Texas citizen.<sup>3</sup>

4. The Petition correctly avers that Defendant Paul Blake resides in Land O'Lakes, Florida. (Petition, ¶ II). Paul Blake is a citizen of the state of Florida. Thus, there is complete diversity of the parties.

---

<sup>1</sup> *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96, 110 S.Ct. 1015, 1021 (1990).

<sup>2</sup> *Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5<sup>th</sup> Cir. 1993); *Massey v. State Farm Lloyds Ins. Co.*, 993 F. Supp. 568, 570 (S.D. Tex. 1998) ("In this case, therefore, the citizenship of State Farm Lloyds must be determined solely by the citizenship of its members, or underwriters.")

<sup>3</sup> *Massey v. State Farm Lloyd's*, 993 F.Supp. 568, 570 (S.D. Tex. 1998) ("Because no member of State Farm Lloyd's is a Texas resident, complete diversity exists between the parties to this action, and this Court has federal diversity jurisdiction under 28 U.S.C. § 1332."); *Rappaport v. State Farm Lloyd's*, 1998 WL 249211 (N.D. Tex. 1998) ("Because the Court finds that State Farm Lloyd's is an unincorporated association whose members are completely diverse with Plaintiff, Plaintiff's Motion to Remand is DENIED.").

5. The Petition alleges that Plaintiffs own property in Laredo, Texas insured under an Insurance Policy issued by ASI (Petition, ¶¶ IV). The Petition alleges that Plaintiff suffered damages as a result of a storm at the residence during the term of the Policy. (Petition, ¶ IV). The Petition further alleges Plaintiff submitted a claim for the damage, (Petition, ¶ IV), at which point ASI allegedly denied and/or underpaid Plaintiff's claim for damages to the Property. (Petition, ¶¶ IV).

6. This Notice of Removal is filed within 30 days of service of the Petition and is therefore timely under 28 U.S.C. Section 1446(b).

7. Defendants do not admit the underlying facts as alleged by Plaintiffs or as summarized above. Further, Defendants expressly deny that they have any liability to Plaintiffs.

#### **DIVERSITY JURISDICTION**

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and this matter is therefore removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff is a citizen of Texas. ASI is a citizen of Florida. *Getty Oil Corp. v. Insurance Co. Of North America*, 841 F.2d 1254, 1262 (5th Cir. 1988). Blake is also a citizen of Florida. Consequently, there is complete diversity of citizenship.

9. The amount in controversy exceeds the jurisdiction minimum of \$75,000 set by 28 U.S.C. § 1332(a). In the Petition, Plaintiff alleges that he seeks "monetary relief, the maximum of which is over \$100,000 but not more than \$200,000." (Petition, ¶ XIII). Plaintiff also seeks penalties, costs, expenses, pre-judgment interest, and attorney fees. (Petition, ¶¶ XIII). Attorneys' fees and penalties may be included as part of the amount in controversy for jurisdictional purposes. *See H & D Tire & Automotive-Hardware, Inc. v. Pitney Bowes, Inc.*,

227 F.3d 326, 330 (5th Cir. 2000). Given the nature of Plaintiffs' claims against Defendants, the alleged damages in this action clearly exceed \$75,000, exclusive of interest and costs. *See Chittick v. Farmers Ins. Exchange*, 844 F. Supp. 1153, 1155-56 (S.D. Tex. 1994).

10. Moreover, because Plaintiffs in Texas are not limited to recovery of damages requested in their pleadings, "[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints." *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). "The general principle is that plaintiffs will have to show that they are bound irrevocably by their state pleadings." *Id.* at 1412 n.10. No binding stipulation or affidavit was filed with Plaintiffs' Petition.

### **REMOVAL PROCEDURE**

11. The clerk of the 341<sup>st</sup> Judicial District Court of Webb County, Texas has been provided notice of this removal.

12. Pursuant to Local Rule 81, copies of the following documents are hereby provided to the clerk for filing in connection with this Notice of Removal:

- a. An index of matters being filed;
- b. The state court file, including any and all executed process, pleadings and exhibits thereto, state court orders, and the state court docket sheet; and
- c. A list of all counsel of record.

WHEREFORE, ASI Lloyds hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ LaDonna G. Schexnyder

LaDonna G. Schexnyder

Texas Bar No. 24072938

Federal ID No. 1096795

[lschexnyder@lawla.com](mailto:lschexnyder@lawla.com)

LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD  
9311 Bluebonnet Blvd., Suite A

Baton Rouge, LA 70810  
Telephone: (504) 568-1990  
Facsimile: (504) 310-9195  
ATTORNEY-IN-CHARGE FOR DEFENDANTS,  
ASI LLOYDS & PAUL BLAKE

OF COUNSEL:

Kelli Gunter  
Texas Bar No. 24059872  
Federal ID No. 1049157  
[kgunter@lawla.com](mailto:kgunter@lawla.com)  
LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD  
815 Walker Street, Suite 1447  
Houston, Texas 77002  
Telephone: (713) 222-1990  
Facsimile: (713) 222-1996

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 20th day of June, 2016, a copy of the foregoing has been served upon all counsel of record in this action by ECF Filing and/or facsimile to:

Mr. Kevin S. Baker  
Mr. Perry Dominguez  
Ketterman Rowland & Westlund  
16500 San Pedro, Suite 302  
San Antonio, TX 78232

/s/ LaDonna G. Schexnyder  
LaDonna G. Schexnyder